Compiler's notes. This section was formerly compiled as § 67-5208 and was amended and redesignated as § 67-5232 by § 23 of S.L. 1992, ch. 263, effective July 1, 1993.

Section 24 of S.L. 1992, ch. 263 is compiled as § 67-5240.

Sec. to sec. ref. This section is referred to in § 67-5201.

67-5233 — 67-5239. [Reserved.]

67-5240. Contested cases. — A proceeding by an agency, other than the public utilities commission or the industrial commission, that may result in the issuance of an order is a contested case and is governed by the provisions of this chapter, except as provided by other provisions of law. [I.C., § 67-5240, as added by 1992, ch. 263, § 24, p. 783.]

Compiler's notes. Section 23 of S.L. 1992, ch. 263, is compiled as § 67-5232.

Sec. to sec. ref. Sections 67-5240 through 67-5255 are referred to in § 67-5206.

67-5241. Informal disposition. — (1) Unless prohibited by other provisions of law:

(a) an agency or a presiding officer may decline to initiate a contested case;

(b) any part of the evidence in a contested case may be received in written form if doing so will expedite the case without substantially prejudicing the interests of any party;

(c) informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement, or consent order. Informal settlement of matters is to be encouraged;

(d) the parties may stipulate as to the facts, reserving the right to appeal to a court of competent jurisdiction on issues of law.

(2) An agency or a presiding officer may request such additional information as required to decide whether to initiate or to decide a contested case as provided in subsection (1) of this section.

(3) If an agency or a presiding officer declines to initiate or decide a contested case under the provisions of this section, the agency or the officer shall furnish a brief statement of the reasons for the decision to all persons involved. This subsection does not apply to investigations or inquiries directed to or performed by law enforcement agencies defined in section 9-337(5), Idaho Code.

(4) The agency may not abdicate its responsibility for any informal disposition of a contested case. Disposition of a contested case as provided in this section is a final agency action. [I.C., § 67-5241, as added by 1992, ch. 263, § 25, p. 783; am. 1993, ch. 216, § 107, p. 587.]

Compiler's notes. Sections 106 and 108 of S.L. 1993, ch. 216 are compiled as §§ 67-5227 and 67-5250, respectively.

67-5242. Procedure at hearing. — (1) In a contested case, all parties shall receive notice that shall include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority under which the hearing is to be held; and

(c) a short and plain statement of the matters asserted or the issues involved.

(2) The agency head, one (1) or more members of the agency head, or one (1) or more hearing officers may, in the discretion of the agency head, be the presiding officer at the hearing.

(3) At the hearing, the presiding officer:

(a) Shall regulate the course of the proceedings to assure that there is a full disclosure of all relevant facts and issues, including such cross-examination as may be necessary.

(b) Shall afford all parties the opportunity to respond and present evidence and argument on all issues involved, except as restricted by a limited grant of intervention or by a prehearing order.

(c) May give nonparties an opportunity to present oral or written statements. If the presiding officer proposes to consider a statement by a nonparty, the presiding officer shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the presiding officer shall require the statement to be given under oath or affirmation.

(d) Shall cause the hearing to be recorded at the agency's expense. Any party, at that party's expense, may have a transcript prepared or may cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(e) May conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) If a party fails to attend any stage of a contested case, the presiding officer may serve upon all parties notice of a proposed default order. The notice shall include a statement of the grounds for the proposed order. Within seven (7) days after service of the proposed order, the party against whom it was issued may file a written petition requesting the proposed order to be vacated. The petition shall state the grounds relied upon. The presiding officer shall either issue or vacate the default order promptly after the expiration of the time within which the party may file a petition. If the presiding officer issues a default order, the officer shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. [1965, ch. 273, § 9, p. 701; am. and redesig. 1992, ch. 263, § 26, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5209 and was amended and redesignated as § 67-5242 by § 26 of S.L. 1992, ch. 263, effective July 1, 1993.

Sec. to sec. ref. This section is referred to in § 67-5249.

Cited in: Swisher v. State Dep't of Envtl. & Community Servs., 98 Idaho 565, 569 P.2d 910 (1977); Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985); Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

ANALYSIS

Hearing.
Notice.
Official notice.
Prejudicial error.
Venue.

Hearing.

While a public utility is entitled to a hear-

ing prior to a commission determination that its filed rates are improper, it is not so entitled where the commission simply dismisses a defective application for a rate increase without prejudice to refiling of the corrected application. Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n, 98 Idaho 718, 571 P.2d 1119 (1977).

The Tax Commission's decision to refer for prosecution a case involving failure to file a state income tax return did not trigger the hearing requirement of this section. State v. Staples, 112 Idaho 105, 730 P.2d 1025 (Ct. App. 1986).

Notice.

Where the notice proposed to suspend the defendants' license for 60 days for violation of the gambling provision, the Idaho Department of Law Enforcement's notice of hearing reasonably informed the defendants of the issues and consequences confronting them at the hearing. State, Dep't of Law Enforcement v. Engberg, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

The purpose of the notice requirement in this section is to inform parties of the particular facts and issues to be addressed in the hearing, allowing an opportunity to prepare a defense. State ex rel. Richardson v. Pierandozzi, 117 Idaho 1, 784 P.2d 331 (1989).

Where, in an action to revoke defendants' liquor license a petition to revoke and a notice of revocation were personally served upon defendants more than four months before the hearing, and where three weeks before the hearing, a notice of hearing was mailed to defendants, taken together, the information contained in the three documents satisfied the notice requirement of the section. State ex rel. Richardson v. Pierandozzi, 117 Idaho 1, 784 P.2d 331 (1989).

Official Notice.

Where the public utilities commission took into consideration historical development of electrical rate structuring and made its considerations in light of current political, economic and environmental realities, it did not contravene this section and § 67-5210 as to matters which may be officially noticed in a proceeding. Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 175, 627 P.2d 804 (1981).

Prejudicial Error.

A claimant's contention that the record failed to disclose whether the appeals examiner considered any state memoranda or data was without merit, where the claimant failed to show whether any such material even existed, and she failed to show prejudicial error. Guillard v. Department of Emp., 100 Idaho 647, 603 P.2d 981 (1979).

Venue.

Where there is no particularized showing that unfair prejudice resulted from the agency's choice of venue, the Court of Appeals will not disturb its eventual decisions. Pence v. Idaho State Horse Racing Comm'n, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

This section provides only that an agency must provide notice of the time, place, and nature of a hearing. It does not fix venue in particular locations. Pence v. Idaho State Horse Racing Comm'n, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

Opinions of Attorney General. This act applies to contested cases; 18 month permanency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 USC 675(5) do not fall within the scope of "contested cases" as defined in the Administrative Procedure Act. OAG 88-9.

Collateral References. Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel. 18 A.L.R.2d 552.

Counsel's absence because of attendance on legislature as ground for continuance. 49 A.L.R.2d 1073.

Comment note on right to assistance by counsel in administrative proceedings. 33 A.L.R.3d 229.

Exceptions under 5 USC § 553(b)(A) and § 553 (b)(B) to notice requirements of Administrative Procedure Act rule making provisions. 45 A.L.R. Fed. 12.

67-5243. Orders not issued by agency head. — (1) If the presiding officer is not the agency head, the presiding officer shall issue either:

(a) a recommended order, which becomes a final order only after review by the agency head in accordance with section 67-5244, Idaho Code; or

(b) a preliminary order, which becomes a final order unless reviewed in accordance with section 67-5245, Idaho Code.

(2) The order shall state whether it is a preliminary order or a recommended order.

(3) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order

within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition. [I.C., § 67-5243, as added by 1992, ch. 263, § 27, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5245.

67-5244. Review of recommended orders. — (1) A recommended order shall include a statement of the schedule for review of that order by the agency head or his designee. The agency head shall allow all parties to file exceptions to the recommended order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(2) Unless otherwise required, the agency head shall either:

(a) issue a final order in writing within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties or for good cause shown;

(b) remand the matter for additional hearings; or

(c) hold additional hearings.

(3) The agency head on review of the recommended decision shall exercise all the decision-making power that he would have had if the agency head had presided over the hearing. [I.C., § 67-5244, as added by 1992, ch. 263, § 28, p. 783.]

Compiler's notes. Section 29 of S.L. 1992, ch. 263 contained a repeal.

67-5245. Review of preliminary orders. — (1) A preliminary order shall include:

(a) a statement that the order will become a final order without further notice; and

(b) the actions necessary to obtain administrative review of the preliminary order.

(2) The agency head, upon his own motion may, or, upon motion by any party shall, review a preliminary order, except to the extent that:

(a) another statute precludes or limits agency review of the preliminary order; or

(b) the agency head has delegated his authority to review preliminary orders to one (1) or more persons.

(3) A petition for review of a preliminary order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, within fourteen (14) days after the issuance of the preliminary order unless a different time is required by other provision of law. If the agency head on his own motion decides to review a preliminary order, the agency head shall give written notice within fourteen (14) days after the issuance of the preliminary order unless a different time is required by other provisions of law. The fourteen (14) day period for filing of notice is tolled by the filing of a petition for reconsideration under section 67-5243(3), Idaho Code.

(4) The basis for review must be stated on the petition. If the agency head on his own motion gives notice of his intent to review a preliminary order, the agency head shall identify the issues he intends to review.

(5) The agency head shall allow all parties to file exceptions to the preliminary order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(6) The agency head shall:

(a) issue a final order in writing, within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties, or for good cause shown;

(b) remand the matter for additional hearings; or

(c) hold additional hearings.

(7) The head of the agency or his designee for the review of preliminary orders shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing. [I.C., § 67-5245, as added by 1992, ch. 263, § 30, p. 783.]

Compiler's notes. Section 29 of S.L. 1992, ch. 263 contained a repeal.

Sec. to sec. ref. This section is referred to in § 67-5243.

67-5246. Final orders — Effectiveness of final orders. — (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of any final order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code. [I.C., § 67-5246, as added by 1992, ch. 263, § 31, p. 783.]

67-5247. Emergency proceedings. — (1) An agency may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action. The agency shall take only such actions as are necessary to prevent or avoid the immediate danger that justifies the use of emergency contested cases.

(2) The agency shall issue an order, including a brief, reasoned statement to justify both the decision that an immediate danger exists and the decision to take the specific action. When appropriate, the order shall include findings of fact and conclusions of law.

(3) The agency shall give such notice as is reasonable to persons who are required to comply with the order. The order is effective when issued.

(4) After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(5) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency contested cases or for judicial review thereof. [I.C., § 67-5247, as added by 1992, ch. 263, § 32, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5254.

67-5248. Contents of orders. — (1) An order must be in writing and shall include:

(a) a reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings.

(b) a statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief.

(2) Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding.

(3) All parties to the contested case shall be provided with a copy of the order. [1965, ch. 273, § 12, p. 701; am. and redesig. 1992, ch. 263, § 33, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5212 and was amended and redesignated as § 67-5248 by § 33 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 513 P.2d 627 (1973).

ANALYSIS

Conclusion of law.
Final decisions.
Fitness of lawyers.
Modifying conditional use permits.
Notice.
Requirements.

Conclusion of Law.

A determination by the department of law enforcement that a driver "refused to take a chemical test of his breath and blood to determine the alcoholic content of his blood" was a conclusion of law and not a finding of fact and the determination being unsupported by findings of fact will be set aside. Mills v. Holliday, 94 Idaho 17, 480 P.2d 611 (1971).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and thus they were not final decisions and did not trigger the limitation period provided for in subsection (b) of § 67-5215. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Fitness of Lawyers.

The procedure to be used in character and fitness determinations of lawyers is not governed by this section since this section does not apply to the State Bar Board of Commissioners because they are a part of the judicial rather than the executive branch. Dexter v. Idaho State Bd. of Comm'rs, 116 Idaho 790, 780 P.2d 112 (1989).

Modifying Conditional Use Permits.

Given the fact that counties have been granted the power to grant conditional use permits, coupled with the need for flexibility in land use planning and the lack of a prohibition on when conditions may be changed, counties have the authority to grant new conditional use permits which modify existing permits. Chambers v. Kootenai County Bd. of Comm'rs, 125 Idaho 115, 867 P.2d 989 (1994).

There is no basis in the statutory scheme for requiring proof of changed circumstances before a modification to an existing conditional use permit may be ordered. Chambers v. Kootenai County Bd. of Comm'rs, 125 Idaho 115, 867 P.2d 989 (1994).

Notice.

Where there was no indication or certificate in the record that a speed letter mailed to plaintiff's counsel was in fact mailed or served, the uncertainty of the notice given requires that the notice be held defective and inadequate to start the running of the appeal time. Cortez v. Owyhee County, 117 Idaho 1034, 793 P.2d 707 (1990).

Requirements.

A party is entitled to a final decision containing findings of fact and conclusions of law before seeking judicial review, and where a transcript did not contain either a final decision or the required findings of fact and conclusions of law the district court erred in finding that one commissioner's motion to deny medical indigency assistance, made at the conclusion of a hearing regarding an application for such assistance and upon which no vote was taken, constituted notice of the commissioner's decision, and the district court also erred by dismissing the appeal as untimely. Cortez v. Owyhee County, 117 Idaho 1034, 793 P.2d 707 (1990).

67-5249. Agency record. — (1) An agency shall maintain an official record of each contested case under this chapter for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law.

(2) The record shall include:

(a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;

(b) evidence received or considered;

(c) a statement of matters officially noticed;

(d) offers of proof and objections and rulings thereon;

(e) the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;

(f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and

(g) any recommended order, preliminary order, final order, or order on reconsideration.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in contested cases under this chapter or for judicial review thereof. [I.C., § 67-5249, as added by 1992, ch. 263, § 34, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5275.

67-5250. Indexing of precedential agency orders — Indexing of agency guidance documents. — (1) Unless otherwise prohibited by any provision of law, each agency shall index all written final orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. The orders shall be indexed by name and subject.

A written final order may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

(2) Unless otherwise prohibited by any provision of law, each agency shall index by subject all agency guidance documents. The index and the guidance documents shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. As used in this section, "agency guidance" means all written documents, other than rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" shall include memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons. The indexing of a guidance document does not give that document the force and effect of law or other precedential authority. [1965, ch. 273, § 2, p. 701; am. 1980, ch. 204, § 1, p. 468; am. and redesig. 1992, ch. 263, § 35, p. 783; am. 1993, ch. 216, § 108, p. 587; am. 1995, ch. 270, § 3, p. 868.]

Compiler's notes. This section was formerly compiled as § 67-5202 and was amended and redesignated as § 67-5250 by § 35 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 107 and 109 of S.L. 1993, ch. 216 are compiled as §§ 67-5241 and 67-5252, respectively.

Sections 2 and 4 of S.L. 1995, ch. 270 are compiled as §§ 67-5230 and 67-5272, respectively.

ANALYSIS

Availability for public inspection.
Public utilities commission.

Availability for Public Inspection.

The rules and regulations of an agency must be properly published and made available for public inspection before the doctrine of exhaustion of administrative remedies becomes applicable; therefore trial court could not rule as a matter of law on motion to

dismiss that appellants had not complied with agency regulations and exhausted its administrative remedy in view of factual issue regarding whether or not the agency's regulations had been published. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

To satisfy the requirement that an agency ruling must be made available for public inspection in order to be given full force and effect, an agency must file in its central office a certified copy of each rule adopted by it as required by I.C. § 67-5204 and must "publish" all effective rules adopted by it as required by I.C. § 67-5205. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

In satisfying its duty to publish its rules, an administrative agency must at least furnish state, district and county law libraries with complete sets of pertinent agency rules and regulations; if it fails to do so its rules and regulations are without force and effect. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

Public Utilities Commission.

Pursuant to this section and § 61-501, the public utilities commission may issue rules providing for procedures to be used in assuring compliance with the requirement for full and adequate prefiling of applications. Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n, 98 Idaho 718, 571 P.2d 1119 (1977).

67-5251. Evidence — Official notice. — (1) The presiding officer may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.

(2) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interests of any party.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(4) Official notice may be taken of:

(a) any facts that could be judicially noticed in the courts of this state; and

(b) generally recognized technical or scientific facts within the agency's specialized knowledge.

Parties shall be notified of the specific facts or material noticed and the source thereof, including any staff memoranda and data. Notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material noticed. Parties must be afforded a timely and meaningful opportunity to contest and rebut the facts or material so noticed. When the presiding officer proposes to notice staff memoranda or reports, a responsible staff member shall be made available for cross-examination if any party so requests.

(5) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. [1965, ch. 273, § 10, p. 701; am. and redesig. 1992, ch. 263, § 36, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5210 and was amended and redesignated as § 67-5251 by § 36 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985); Idaho State Ins. Fund v. Hunnicutt, 110 Idaho 257, 715 P.2d 927 (1985); Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

ANALYSIS

Evidence.
Exhibits.
Failure to object.

Hearsay.
Judicial notice.
Medical indigency.
Official notice.
Oral testimony judicially cognizable.
Testimony.

Evidence.

The pharmacist's conviction for possession of drug paraphernalia, which was a ground for discipline under subdivisions (1)(c)3 and (1)(f) of § 54-1726, was not subject to collateral attack in an administrative agency action, and the judgment of conviction for possession of drug paraphernalia was admissible under this section. Brown v. Idaho State Bd. of Pharmacy, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

Exhibits.

An unemployment compensation claimant was not prejudiced by the admission of exhibits, where there was absolutely no indication that the appeals examiner or the Industrial Commission relied to any extent on the exhibits, but to the contrary, the Commission relied exclusively on the claimant's statements made at the hearings on the record. Guillard v. Department of Emp., 100 Idaho 647, 603 P.2d 981 (1979).

Failure to Object.

When the claimant did not object when certain exhibits were introduced into the record by the appeals examiner, thereafter the referee and the Industrial Commission were required to include such exhibits as part of the record of the proceedings before the Commission. Guillard v. Department of Emp., 100 Idaho 647, 603 P.2d 981 (1979).

Hearsay.

The liberality as to the admission of evidence allows hearsay evidence to be admitted in hearings before the Industrial Commission at the discretion of the hearing officer. Hoyt v. Morrison-Knudsen Co., 100 Idaho 659, 603 P.2d 993 (1979).

Judicial Notice.

Under subdivision (4) of this section, a county commission was entitled to take judicial notice of its own county ordinances dealing with planning and zoning, and district court erred in concluding otherwise. Hubbard v. Canyon County Comm'rs, 106 Idaho 436, 680 P.2d 537 (1984).

The examiner did not err in taking judicial notice of the defendants' beer and liquor licenses where the Idaho Department of Law Enforcement is the agency which issued the license numbers to the defendants, the defendants' record in this case contained a copy of the defendants' licenses and the defendants presented no evidence to dispute that they were the holders of the two licenses. State, Dep't of Law Enforcement v. Engberg, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

The fact that the proposed decision and order on the company's application for a water permit mentioned the post hearing creation of a ground water unit did not taint the opinion, because creation of the unit was a cognizable fact which the Department of Water Resources was entitled to take notice of under subsection (4) of this section, and the proposed decision and order provided the company with notice that the existence of the unit was included in the department's deliberations, and the company made no objection or request for an additional hearing, pursuant to § 42-1701A(3), to meet the new information concerning the unit. Collins Bros. Corp. v. Dunn, 114 Idaho 600, 759 P.2d 891 (1988).

Medical Indigency.

An applicant for medical assistance bears the burden of proving medical indigency. Intermountain Health Care, Inc. v. Board of County Comm'rs, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

Official Notice.

Where the public utilities commission took into consideration historical development of electrical rate structuring and made its considerations in light of current political, economic and environmental realities, it did not contravene § 67-5209 and this section as to matters which may be officially noticed in a proceeding. Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 175, 627 P.2d 804 (1981).

Oral Testimony Judicially Cognizable.

Where two cost of service studies were subject of oral testimony but not admitted into evidence, the public utilities commission had them available for consideration since they were judicially cognizable under this section. Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 175, 627 P.2d 804 (1981).

Testimony.

The blanket requirement of the county commissioners, for presentation of "expert" testimony in determining medical indigency, the necessity for medical treatment, and the reasonableness of the hospital bills, is not necessarily correct; the type of testimony warranted can only be determined on consideration of the facts in each case. IHC Hosps. v. Board of Comm'rs, 108 Idaho 136, 697 P.2d 1150, overruled on other grounds sub nom. Intermountain Health Care, Inc. v. Board of County Comm'rs, 108 Idaho 757, 702 P.2d 795 (1985).

Opinions of Attorney General. This act applies to contested cases; 18 month perma-